

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

KELLY CONSTRUCTION, INC.,

Respondent.

CASE NO. OSH 2009-11

ORDER NO. 319

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) by conference call on May 27, 2009, and attended by J. Gerard Lam, Deputy Attorney General, for Complainant, and John J. Kelly, Jr., by telephone, for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1 (29 C.F.R. 1926.100(a))

Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$700.00, resulting from Inspection No. 311435952, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1926.100(a) [Refer to chapter 12-114.2, HAR] was violated because:

An employee was not wearing a protective helmet (hard hat) and was potentially exposed to over head falling objects when he exited the work area (building).

2. Citation 1, Item 2a (29 C.F.R. 1926.501(b)(1))

Whether Citation 1, Item 2a, including the characterization as "Serious" and the associated penalty of \$875.00, resulting from Inspection No. 311435952, was valid and proper.

Citation 1, Item 2a alleged:

29 CFR 1926.501(b)(1) [Refer to chapter 12-121.2, HAR] was violated because:

A seven foot wide section of the second floor area that (sic) was not guarded by a standard guard railing, instead yellow warning tape was erected at the open sided edge of the floor. The lack of guard railings exposed employees to potential serious injuries due to the fall hazard of 10 feet 3 inches to the lower level.

3. Citation 1, Item 2b (29 C.F.R. 1926.502(b)(1))

Whether Citation 1, Item 2b, including the characterization as "Serious", resulting from Inspection No. 311435952, was valid and proper.

Citation 1, Item 2b alleged:

29 CFR 1926.502(b)(1) [Refer to chapter 12-121.2, HAR] was violated because:

Two employees were working on a 18.5 foot length of an open sided floor that had a top railing that measured only 33.5 inches in height. There was also a 5 foot 6 inch wide section of open sided floor that was only provided with one railing that measured 27 inches in height.

4. Citation 1, Item 2c (29 C.F.R. 1926.502(b)(2))

Whether Citation 1, Item 2c, including the characterization as "Serious", resulting from Inspection No. 311435952, was valid and proper.

Citation 1, Item 2c alleged:

29 CFR 1926.502(b)(2) [Refer to chapter 12-121.2, HAR] was violated because:

Two employees were working on a 4 foot 4 inch wide section of an open sided floor that was missing the midrailing, thus exposing employees to a potential serious injuries from a 11 foot fall to the lower level. Employees were also working on a 5 foot 6 inch wide section of an open sided floor that was provided with only one railing that measured 27 inches in height.

5. Citation 1, Item 3 (29 C.F.R. 1926.451(c)(3))

Whether Citation 1, Item 3, including the characterization as "Serious", and the associated penalty of \$700.00 resulting from Inspection No. 311435952, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1926.451(c)(3) [Refer to chapter 12-130.1, HAR] was violated because:

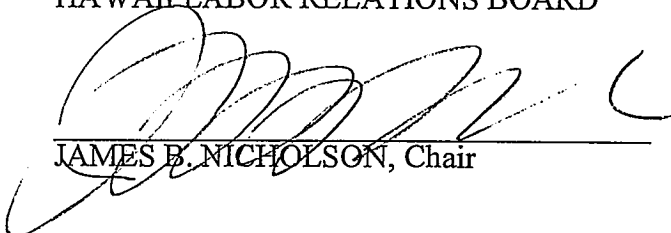
A two stage high tubular 2 welded scaffold system was not plumb and braced to prevent swaying and displacement.

- B. The deadline for the parties' final naming of witnesses is **June 29, 2009**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The discovery cutoff date is **July 29, 2009**.
- D. Trial in this matter is scheduled for **August 26 and 27, 2009 at 8:30 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. KELLY
CONSTRUCTION, INC.
CASE NO. OSH 2009-11
ORDER NO. 319
PRETRIAL ORDER

DATED: Honolulu, Hawaii, May 28, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

J. Gerard Lam, Deputy Attorney General
John J. Kelly, Jr.